

STATE OF CONNECTICUT

DEPARTMENT OF CONSUMER PROTECTION

IN THE MATTER OF

Northeast Beverage Corporation of CT
Liquor Permit # LIW.518
Docket No. 07-1146

August 14, 2007

MEMORANDUM OF DECISION

This matter involves a request by The Olde Burnside Brewing Co., LLC, (hereinafter "Olde Burnside") for the termination of Northeast Beverage Corporation of CT (hereinafter "Northeast Beverage") as distributor of all brands of Olde Burnside, including "Ten Penny Ale," "Dirty Penny Ale," as well as all of their seasonals, in the State of Connecticut. Olde Burnside is the holder of manufacturer beer permit LMB.1511, and Northeast Beverage is the holder of wholesaler liquor permit LIW.518. A formal administrative hearing was held on July 5, 2007, at which time Robert L. McClellan appeared on behalf of the Olde Burnside, and Thomas Walsh appeared on behalf of Northeast Beverage.

The hearing was properly held in accordance with Section 30-17(a)(2)(B) of the Connecticut General Statutes. Section 30-17(a)(2)(B) of the Connecticut General Statutes provides the method by which termination or diminishment may occur of a distributorship. The statute provides, *inter alia*,

No such termination or diminishment shall become effective except for just and sufficient cause, provided such cause shall be set forth in such notice and the Department of Consumer Protection shall determine, after hearing, that just and sufficient cause exists...For the purposes of this section, “just and sufficient cause” means the existence of circumstances which, in the opinion of a reasonable person considering all of the equities of both the wholesaler and the manufacturer or out-of-state shipper warrants a termination or a diminishment of a distributorship as the case may be.

The determination of what constitutes “just and sufficient cause” is a matter for this Commission, after considering the equities of both parties to ascertain whether termination is warranted. Schiefflin & Co. v. Department of Liquor Control, 194 Conn. 165, 479 A.2d 1191 (1984).

We find the following facts based upon the evidence which is part of the record. By letter dated April 10, 2007, Olde Burnside submitted its formal notice for termination to Northeast Beverage. Such notice sets forth eight circumstances which we must review to determine whether, if proven, would show that just and sufficient cause exists to terminate the distributorship. There was, at times, conflicting testimony by the parties. The determination of factual issues on conflicting testimony is within the province of the commission, Noyes v. Liquor Control Commission, 151 Conn. 524, 527, 200 A.2d 467 (1964).

Therefore, we find in favor of Olde Burnside with respect to the circumstances cited as Number 1 through 7 of the April 10, 2007 notice, and find that the existence of such circumstances constitute just and

sufficient cause for termination. The Liquor Control Act vests in the Commission a liberal discretionary power to determine factual matters with regard to liquor permits. Gulia v. Liquor Control Commission, 164 Conn. 537, 325 A.2d 455 (1973).

Accordingly, based upon the substantial evidence presented, we find there is just and sufficient cause to justify the termination of Northeast Beverage as the distributor of all brands of Olde Burnside, including "Ten Penny Ale," "Dirty Penny Ale," as well as all of their seasonals, in the State of Connecticut. The request of The Olde Burnside Brewing Co. to terminate Northeast Beverage Corporation of CT is hereby granted, effective immediately.

**DEPARTMENT OF CONSUMER PROTECTION
LIQUOR CONTROL COMMISSION**

BY:

Elisa A. Nahas, Esq.
Designated Hearing Officer

Angelo J. Faenza, Commissioner

Gary Berner, Commissioner

Parties:

Northeast Beverage Corporation of CT, 32 Robinson Blvd., Orange, CT
06477

(Via US Mail and Certified Mail # 7006 3450 0003 6876 1365)

R. L. McClellan, The Olde Burnside Brewing Co., LLC, 780 Tolland Street
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(Via US Mail and Certified Mail # 7006 3450 0003 6876 1334)

Non-Parties:

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